

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.10075 OF 2005

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Dated : 14th September, 2005

Between:

P. Vasudev Reddy, S/o. Venkat Reddy,
Aged about 32 years, Occ; Business,
R/o. H.No.2-5-394, S.V. colony,
Behind Adalath, Hanamkonda, Warangal Dist.

.. Petitioner

And

1. The Collector / Chairman H.D.S., M.G.M.
Hospital, Warangal, Warangal District.
 2. The Superintendent, M.G.M. Hospital,
Warangal.
 3. The Director of Medical Education, Koti,
Hyderabad.
 4. The Principal Secretary, Medical & F.w. (C1)
Department, Secretariat Buildings, Hyderabad.
- .. Respondents

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ORDER :

This writ petition seeking a declaration that the alleged action of the respondents in not paying the enhanced diet rates as per G.O.Ms.No.191, dated 6-4-1999 and G.O.Ms.No.255 dated 20-06-2003 as arbitrary, illegal and discriminatory apart from being in violation of the Article 14 of the Constitution of India. He also seeks a further direction to extend the diet contract in M.G.M. Hospital, Warangal for further period as per G.O.Ms.No.32, Health, Medical & Family Welfare (M1) Department, dated 2-2-2005.

The writ petitioner was awarded a contract by the 2nd respondent - The Superintendent, M.G.M. Hospital, Warangal for supply of diet to In-patients and Duty Doctors in the Mahatma Gandhi Memorial Hospital, Warangal for a period of one year from 5-6-2004 to 31-5-2005. For the previous year i.e., from 1-5-2003 to 31-5-2004 also the petitioner was awarded the said contract and it is not in dispute that he made the supplies during the entire period of contract. The petitioner states that during the previous year the respondents offered diet charges at the rate of Rs.12.75 ps per In-patient per day and Rs.34/- per Duty Doctor per day. It is alleged that while awarding the contract for the year 2004-05, the respondents requested him to supply the diet at the same rates for certain period due to extraneous circumstances, however promised to pay the difference of amount at the higher rates prescribed under G.O.Ms.No.255, Health, Medical & Family Welfare (C1) Department, dated 20-06-2003 from 5-6-2004. In order to maintain the good relations with the respondents, the petitioner has been supplying the diet at Rs.12.75 ps per In-patient and Rs.34/- per Duty Doctor in spite of the rates prescribed under the agreement at the rate of Rs.15/- per In-patient and Rs.40/- per Duty Doctor. However, since the petitioner was put to heavy financial loss, he made a representation dated 9-9-2004 to the 3rd respondent - Director of Medical Education, A.P., Hyderabad requesting for payment of the diet charges at the enhanced rates. Having considered the same, the third respondent by letter dated 28-09-2004 directed the 2nd respondent to take the necessary steps in the light of the orders in G.O.Ms.No.191, dated 6-4-1999 and G.O.Ms.No.222, Health, Medical & Family Welfare (M1) Department, dated 10-6-2002. That apart, the petitioner also made a further representation dated 11-10-2004 requesting the 1st respondent – Collector/Chairman of the Hospital Development Society (H.D.S.), M.G.M. Hospital, Warangal to take the appropriate action. The petitioner alleges that in spite of his repeated representations, the respondents failed

to take any action to pay the diet charges at the enhanced rates. Hence, this writ petition.

The 1st respondent – Collector, Warangal District who is the Chairman of H.D.S., M.G.M. Hospital, Warangal filed a counter-affidavit in which the fact that the petitioner was awarded the diet contract for supply of diet to the In-patients and Duty Doctors of M.G.M. Hospital, Warangal during the years 2003-04 as well as 2004-05 has been admitted. It was explained that when the tenders were invited for awarding the contract for the year 2003-04, the petitioner quoted the rates as prescribed under G.O.Ms.No.191, dated 6-4-1999 i.e., at the rate of Rs.15/- per In-patient and Rs.40/- per Duty Doctor and accordingly he was paid the charges at the same rates. However, for the year 2004-05 in response to the Tender Notification published in the Local Dailies dated 9-5-2004 and 10-5-2004, the petitioner having participated, quoted only Rs.12.75 ps per In-patient and Rs.34/- per Duty Doctor. The two other tenderers quoted higher rates. Since the rates quoted by the petitioner were found to be lowest and the same were also less than the rates prescribed under G.O.Ms.No.191, dated 6-4-1999, the diet contract was awarded to the petitioner after executing a bond by incorporating a condition that the charges will be paid as the rates quoted by him in his tender. The plea of the petitioner that the respondents have promised to pay at the rate of Rs.15/- per In-patient and Rs.40/- per Duty Doctor has been specifically denied and it was stated that the petitioner himself has quoted the said price. So far as the representations made by the petitioner, it was stated that the same was considered and a note has been submitted to the 1st respondent by the Diet Committee of the M.G.M. Hospital, Warangal to consider the request of the petitioner for payment of charges at the enhanced rates. However, the 1st respondent rejected the same since it would be against the tender conditions. With regard to the claim of the petitioner for continuation of the contract for one more year, it was stated that the same is under consideration by the 1st respondent.

I have heard the learned Counsel for the petitioner as well as the learned Government Pleader appearing for the respondents, and perused the material on record.

It is to be noted that having considered the proposal submitted by the Director of Medical Education, A.P., Hyderabad for enhancement of diet charges for supply of diet to In-patients by Diet Canteens, the Government of A.P. issued G.O.Ms.No.191, dated 6-4-1999 revising the existing diet charges for supply of diet to the In-patients and Duty Doctors in all the Teaching Hospitals. As per the said G.O.Ms.No.191, dated 6-4-1999, the enhanced rates were Rs.15/- per In-patient per day and Rs.40/- per Duty Doctor per day. Subsequently, under G.O.Ms.No.255, Health, Medical & Family Welfare (C1) Department, dated 20-06-2003 the Government has revised the diet charges from Rs.10/- to Rs.15/- to all the categories of In-patients and also payment of Rs.20/- for T.B. and Mental Patients in the hospitals under the control of A.P. Vydy Vidhana Parishad also on par with Teaching Hospitals.

In the light of the above said Government Orders, it is no doubt true that the diet contractors are entitled to be paid the diet charges at the rate of Rs.15/- per In-patient per day and Rs.40/- per Duty Doctor per day. However, in the case on hand, the petitioner having participated in the tenders invited for the year 2004-05 i.e., the period from 5-6-2004 to 31-5-2005 has quoted the rates as Rs.12.75 ps per In-patient per day and Rs.34/- per Duty Doctor per day. Though the same were less than the rates prescribed under G.O.Ms.No.191, dated 6-4-1999, since the rates quoted by the petitioner were the lowest, the petitioner was declared as the successful bidder and he was awarded the contract. In pursuance of the same, an Agreement dated 5-6-2004 was concluded between the petitioner and the 2nd respondent in which under clause-8 it was specifically agreed upon that ***the rates of the diet to the In-patients and Duty Doctors will be as per the rates quoted in the tenders.*** In the circumstances, the petitioner is bound by the said agreement and his claim for payment of rates as prescribed under G.O.Ms.No.191, dated 6-4-1999 is misconceived and untenable.

It is relevant to note that for the previous year i.e., 1-5-2003 to 31-5-2004 the petitioner was paid the diet charges by the 2nd respondent at the rate of Rs.15/- per In-patient and Rs.40/- per Duty Doctor since the petitioner has quoted the said rates in his tender. The petitioner has admitted in para-7 of his affidavit that he was paid at the abovesaid rates for the previous year. Having quoted lesser rates in the tenders

invited for the subsequent year, his claim with regard to the period from 5-6-2004 to 31-5-2005 at the rate of Rs.15/- per In-patient and Rs.40/- per Duty Doctor is obviously an after-thought and cannot be accepted particularly in view of the specific clause in the agreement that the rates of the diet will be as per the rates quoted in the tenders.

Though the learned Counsel for the petitioner vehemently contended that the respondents have no power to vary the rates fixed under G.O.Ms.No.191, dated 6-4-1999 and G.O.Ms.No.255, dated 20-6-2003 and therefore they are bound to implement the rates prescribed under the said Government Orders and relied upon a Judgment of the Division Bench dated 19-7-2001 in Writ Appeal No.280 of 2000 and batch, I am unable to agree.

As expressed above, since the petitioner has voluntarily quoted the lesser rates and entered into an agreement, he is bound by the terms and conditions of the said agreement and therefore he cannot make any claim for the higher rates prescribed under G.O.Ms.No.191, dated 6-4-1999 and G.O.Ms.No.255, dated 20-6-2003.

In the decision of the Division Bench, relied upon by the learned Counsel for the petitioner, the question raised was only with regard to the date of enforcement of enhanced rates fixed under G.O.Ms.No.256, Health, Medical & Family Welfare Department, dated 31-5-1995 and the said decision has no application at all to the issue in controversy in the case on hand.

Even with regard to the further direction sought by the petitioner for extension of the diet contract, placing reliance upon G.O.Ms.No.32, dated 2-2-2005, I am not inclined to issue any Mandamus to the respondents as prayed for. Under G.O.Ms.No.32, dated 2-2-2005 the Government decided to give a minimum period of three years to the Diet Canteen Contracts in respect of supply of diet to In-patients and Duty Doctors of all Government Hospitals with a proviso that it can be terminated if the performance is found to be unsatisfactory at any time in the contract period with immediate effect. Since in the counter-affidavit filed on behalf of the 1st

respondent, it is stated that the request of the petitioner seeking extension of the benefit of the said G.O.Ms.No.32, dated 2-2-2005 and continue him for further period is under consideration, it is for the Hospital Development Society to take an appropriate decision in accordance with law. Since no such decision has yet been taken, it cannot be said that there is any cause of action to invoke the jurisdiction of this Court under Article 226 of the Constitution of India. However, since the respondents have admitted that the request of the petitioner is under consideration, there shall be a direction to the respondents to pass appropriate orders on the representation of the petitioner, if not already passed, and communicate the same to him within a period of two weeks from the date of receipt of this order.

For the aforesaid reasons, the Writ Petition is devoid of any merit and the same is accordingly dismissed subject to the above direction. No costs.

14th September, 2005.

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THE HON'BLE Ms. JUSTICE G. ROHINI

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